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EXAMINER

HANDY, DWAYNE K

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 04/09/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,382

Applicant(s)

Gebrian et al.

Examiner

Dwayne K. Handy

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1743



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 29, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 U.S.C. § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, the phrase “the latching flange having a pair of canister latch steps engageable by spring-loaded latching cams secured within the chamber”. This phrase is unclear. The term “the chamber” lacks antecedent basis. Therefore the Examiner is unsure what structural elements are required to meet the limitation of a latch step “engageable by spring-loaded latching cams secured within the chamber” since part of the basis for this limitation - the chamber - has not been defined.

Inventorship

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim Rejections - 35 U.S.C. § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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6. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guibert (4,269,169) in view of Abe (5,534,224). Guibert teaches a cartridge for holding sealed food trays. The cartridge is used in conjunction with a hot-air oven system which reheats pre-cooked meals. The pre-cooked meals are placed in trays which are then held in the cartridge. The cartridge C is best shown in Figures 1 and 3 and described in column 4. The cartridge has 6 sides with a 5-sided back in the shape of an abbreviated hexagon. The cartridge is used to contain sealed food trays of an irregular shape (Fig. 2) in a stacking arrangement inside a hot air oven (28). Guibert does not teach a cartridge with a front wall element. The cartridge of Guibert has an open front. Abe teaches a chemical analysis cartridge which holds film chips that are stacked inside the casing. The cartridge is a box-like casing body with opposing first and second end walls and a first opening in a side wall of the casing body for removing the chips from the cartridge. The cartridge is best shown in Figure 1A and described in columns 8 and 9. The cartridge is generally rectangular and provides an enclosed space for holding analysis chips in an automated analysis system. The chips are removed from the cartridge through an opening (20c) in a wall (20b). It would have been obvious to one of ordinary skill in the art to combine the wall with an opening from Abe to the cartridge of Guibert. The addition of the wall with an opening at the bottom would add an additional support structure (the wall) for keeping the trays held firmly in the cartridge of Guibert while still allowing for the removal of the trays through the opening (20C) provided in the bottom of the wall.

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7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guibert (4,269,169) and Abe (5,534,224) as applied to claims 1 and 2 above, and further in view of James (5,950,833). Guibert and Abe, as combined in paragraph 6 above, teach every element of claim 3 except for the internal ribs extending along the interior of the walls for securing test devices within the canister. James teaches a stackable package for cushioning a crushable article having a rounded edge. The embodiments of most relevance to the instant claims are shown in Figures 2, 8 and 12. The package of James includes cushion elements (24, 26, etc.,) which support the package and the articles in the package. The cushion elements may be separate from the internal walls of the package, or - as shown in Figure 4 - may be an integral part of the wall itself (see column 9, lines 15-48 as well). It would have been obvious to combine the internal elements of James with the combined teachings of Guibert and Abe. One would add the inner cushioning elements to prevent damage to the stacked members in the cartridge.

8. Claims 4-6, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guibert (4,269,169) and Abe (5,534,224) as applied to claims 1 and 2 above, and further in view of Warner et al. (5,642,810). Guibert and Abe, as combined in paragraph 6 above, teach every element of claims 4-6, 9, and 10, except for flanges extending above and below the top and bottom of the container. Warner teaches a package for plastic bag rolls that is comprised of two halves hinged about an edge on the bottom of the container. The Container is best shown in Figures 1-4 and described in column 2. The container has flanges which extend around the main

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container and are formed as an extension of an edge at the bottom of the container. The edge at the bottom of the container has a hinge which allows for the opening of the container. The outer flanges are brought together in a frictional sealing arrangement (Figure 4 and col. 4, line 1) to seal the container. It would have been obvious to combine the teachings of Warner with the combined teachings of Guibert and Abe. The addition of the hinge feature would allow for the opening of the cartridge for loading without totally disassembling the cartridge.

Response to Arguments

9. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection. The Examiner does agree with applicant that the previous rejections made involving under Abe in view of Croteau that this particular combination of references does not meet the limitations of claim 1. Therefore, the Examiner, has removed all rejections based on combinations of the prior art cited in the previous Office Action, paper number 8. The Examiner believes the prior art cited in this action to be more appropriate in rejecting the instant claims.

Allowable Subject Matter

10. Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Allebest et al. (4,701,896), Chen (5,611,448), Flener (5,657,198), Joshi (5,833,067), and Kanoyadani et al. (6,530,478) teach cylindrical containers for holding circular elements that are similar to applicant's device.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K. Handy whose telephone number is (703)-305-0211. The examiner can normally be reached on Monday-Friday from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden, can be reached on (703)-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703)-772-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0661.

dkh

April 7, 2003


Jill Warden
Supervisory Patent Examiner
Technology Center 1700